TO BE PUBLISHED IN THE OFFICIAL REPORTS

OFFICE OF THE ATTORNEY GENERAL
State of California

JOHN K. VAN DE KAMP
Attorney General

OPINION	
of	No. 83-1001
JOHN K. VAN DE KAMP Attorney General	JANUARY 10, 1984
RODNEY O. LILYQUIST Deputy Attorney General	

THE HONORABLE DOROTHY L. SCHECHTER, COUNTY COUNSEL, VENTURA COUNTY, has requested an opinion on the following question:

May the Board of Supervisors of the Ventura County Flood Control District levy and collect an ad valorem assessment upon the taxable property of the district or any zone thereof?

CONCLUSION

The Board of Superviors of the Ventura County Flood Control District may levy and collect an ad valorem assessment upon the taxable property (but only land and improvements) of the district or any zone thereof.

ANALYSIS

Section 12 of the Ventura County Flood Control Act (Stats. 1975, ch. 137, § 1, pp. 260-261; Deering's Wat. - Uncod. Acts, Act 8955 (1983 Supp.) p. 85; hereafter "Act") provides:

> "The board of supervisors of said district shall have power, in any year:
>
> "1. To levy an ad valorem tax or assessment upon all taxable property in the district to pay the costs and expenses of said Ventura County Flood Control District and to carry out any of the objects or purposes of this act of common benefit to the district as a whole, and

"2. To levy an ad valorem tax or assessment upon all taxable property in each or any of said zones, according to the benefits derived or to be derived by said respective zones, including the constructing, maintaining, operating, extending, repairing or otherwise improving any or all works or improvements within said respective zones. It is declared that all property within a given zone is equally benefited under this act.

"Said taxes or assesments shall be levied and collected together with, and not separately from, taxes for county purposes, and the revenues derived from said taxes shall be paid into the county treasury to the credit of said district, and said board of supervisors shall have the power to control and order the expenditure thereof for said purposes; provided, however, that no revenues, or portions thereof, derived in any of the several zones from the taxes or assessments levied under the provisions of subdivision 2 of this section shall be expended for constructing, maintaining, operating, extending, repairing or otherwise improving any works or improvements located in any other zone except as provided in Section 14 hereof; and provided further, however, that the aggregate taxes or assessments levied under this act for any one fiscal year shall not exceed thirty-two cents ($0.32) on each one hundred dollars ($100) of the assessed valuation of the taxable property in zone 1, shall not exceed forty cents ($0.40) on each one hundred dollars ($100) of the assessed valuation of the taxable property in zones 2 and 4, shall not exceed twenty-seven cents ($0.27) on each one hundred dollars ($100) of the assessed valuation of the taxable property in zone 3, and shall not exceed one dollar ($1) on each one hundred dollars ($100) of the assessed valuation of the taxable property in any special zone in addition to the aggregate taxes or assessments levied for zone 1, 2, 3, or 4 and exclusive of any tax or assessment levied to pay the cost and expenses of any project or facility for importing water into the district or to meet any bonded indebtedness of said zones or district and the interest thereon." 1/ (Emphases added.)

---

1. Section 14 of the Act authorizes joint projects among zones of the District that are "of common benefit to said participating zones."

The question presented for analysis is whether the Board of Supervisors of the Ventura County Flood Control District (hereafter "District") may exercise its authority under the above statute to levy an "assessment" upon the taxable property of the district or any zone thereof. We conclude that it may with regard to taxable real property.

The issue is significant due to the adoption of article XIII A of the Constitution on June 6, 1978. Section 1, subdivision (a) of the article states:

> "The maximum amount of any ad valorem tax on real property shall not exceed One percent (1%) of the full cash value of such property. The one percent (1%) tax to be collected by the counties and apportioned according to law to the districts within the counties."

The Legislature has implemented this constitutional limitation upon the collection of property taxes by enacting Revenue and Taxation Code section 93:

> "(a) Notwithstanding any other provision of law, except as provided in subdivision (b), no local agency, school district, county superintendent of schools, or community college district shall levy an ad valorem property tax, other than that amount which is equal to the amount needed to make annual payments for the interest and principal on general obligation bonds or other indebtedness approved by the voters prior to July 1, 1978 or the amount levied pursuant to Part 10 (commencing with Section 15000) of Division 1 and Sections 39308, 39311, 81338, and 81341 of the Education Code. In determining the tax rate required for the purposes specified in this subdivision, the amount of the levy shall be increased to compensate for any allocation and payment of tax revenues required pursuant to subdivision (b) of Section 33670 and subdivision (d) of Section 33675 of the Health and Safety Code.
>
> "(b) A county shall levy an ad valorem property tax on taxable assessed value at a rate equal to four dollars ($4) per one hundred dollars ($100) of assessed value, and at an equivalent rate when the ratio prescribed in Section 401 is changed from 25 percent to 100 percent. The revenue from such tax shall be distributed, subject to the allocation and payment as provided in subdivision (d) of Section 33675 of the Health and Safety Code, to local agencies, school districts, county superintendents of schools, and community college

districts in accordance with the provisions of the Government Code." (Emphases added.)

If the flood control levy under section 12 of the Act is an ad valorem ("according to value") property tax, its collection is prohibited unless it meets the special circumstances of Revenue and Taxation Code section 93. (See County of Fresno v. Malmstrom (1979) 94 Cal.App.3d 974, 980-981.)

On the other hand, neither the constitutional limitation nor the prohibition of Revenue and Taxation Code section 93 governs the imposition of special assessments. (See American River Flood Control Dist. v. Sayre (1982) 136 Cal.App.3d 347, 355; Solvang Mun. Improvement Dist. v. Board of Supervisors (1980) 112 Cal.App.3d 545, 556-557; County of Fresno v. Malmstrom, supra, 94 Cal.App.3d 974, 979-982; 65 Ops.Cal.Atty.Gen. 790, 791-795 (1981).) Our task, therefore, is to determine whether section 12 of the Act authorizes the imposition of "special assessments."

Much confusion has arisen in attempting to distinguish a "special assessment" from a "tax." (See County of Placer v. Corin (1980) 113 Cal.App.3d 443, 450; Solvang Mun. Improvement Dist. v. Board of Supervisors, supra, 112 Cal.App.3d 545, 553-554; County of Fresno v. Malmstrom, supra, 94 Cal.App.3d 974, 983; Northwestern etc. Co. v. State Board of Equalization (1946) 73 Cal.App.3d 548, 551.) Although often helpful, the uses to which the funds are put do not always provide a distinguishing characteristic. While a "tax" may fund general governmental services (see County of Placer v. Corin, supra, 113 Cal.App.3d 443, 449, 451; Solvang Mun. Improvement Dist. v. Board of Supervisors, supra, 112 Cal.App.3d 545, 553, 557; County of Fresno v. Malmstrom, supra, 94 Cal.App.3d 974, 983; County of San Bernardino v. Flournoy (1975) 45 Cal.App.3d 48, 51-52; Northwestern etc. Co. v. State Board of Equalization, supra, 73 Cal.App.3d 548, 551, 554), and a "special assessment" may fund the construction of a local public improvement (see Inglewood v. County of Los Angeles (1929) 207 Cal. 697, 702; Taylor v. Palmer (1866) 31 Cal. 241, 254-256; County of Placer v. Corin, supra, 113 Cal.App.3d 443, 450, 454; Solvang Mun. Improvement Dist. v. Board of Supervisors, supra, 112 Cal.App.3d 545, 552, 554; County of Fresno v. Malmstrom, supra, 94 Cal.App.3d 974, 981; County of San Bernardino v. Flournoy, supra, 45 Cal.App.3d 48, 51-52; Harrison v. Board of Supervisors (1975) 44 Cal.App.3d 852, 856; Northwestern etc. Co. v. State Board of Equalization, supra, 73 Cal.App.2d 548, 551-552), either may be used to construct, operate, and maintain a public improvement as in the present case (see Anaheim Sugar Co. v. County of Orange (1919) 181 Cal. 212, 216-217; People v. Whyler (1871) 41 Cal. 351, 354; 5

Witkin, Summary of Cal. Law (8th ed. 1974) Taxation, § 22, p. 4007). 2/ As was stated by the Court of Appeal in Solvang Mun. Improvement Dist. v. Board of Supervisors, supra, 112 Cal.App.3d 545, 553-554:

> "In practical application, the two types of taxation, general ad valorem taxes and special assessments, to some extent overlap, and we cannot always differentiate between them with precision. A tax to pay the cost of a particular improvement may be crafted as a special assessment levied against particular real property within a local district on the theory that this property is the primary beneficiary of the improvement, or it may be structured as a general ad valorem tax levied on property in a larger area on the theory that all property within the larger area benefits to some extent from the improvement. Such variegated treatment may be seen in the projects of water districts, flood control districts, sewer districts, irrigation districts, and similar public entities, where the benefit of the improvement to particular property is sometimes thought to outweigh its benefit to property in the larger area, and sometimes not. [Citations.]"

Nevertheless, "in spite of ambiguities encountered in practice, the basic distinction between general ad valorem taxation and special assessment to meet the cost of a local improvement remains reasonably clear." (Solvang Mun. Improvement Dist. v. Board of Supervisors, supra, 112 Cal.App.3d 545, 554.) The key factor differentiating the two is that a special assessment is a charge against property specially benefited by the expenditure, while a tax does not have a "benefit" requirement. (See White v. County of San Diego (1980) 26 Cal.3d 897, 904; People v. Whyler, supra, 41 Cal. 351, 355; Taylor v. Palmer, supra, 31 Cal.241, 254-256; County of Placer v. Corin, supra, 113 Cal.App.3d 443, 449-453; Solvang Mun. Improvement Dist. v. Board of Supervisors, supra, 112 Cal.App.3d 545, 552-554; County of Fresno v. Malmstrom, supra, 99 Cal.App.3d 974, 908; County of San Bernardino v. Flournoy, supra,

---

2. As specified in section 12 of the Act, the levy of the "tax or assessment" is for "the constructing, maintaining, operating, extending, repairing or otherwise improving any or all works or improvements," as well as for "carrying out any of the objects or purposes of this Act," which are defined as providing "for the control of the flood and storm waters of said district. . . ." (Act, § 7.)

45 Cal.App.3d 48, 51-52; Harrison v. Board of Supervisors, supra, 44 Cal.App.3d 852, 856.) 3/

Under the provisions of the Act, the Legislature has made the requisite "benefit" determination to support the levy of a special assessment. Section 12 of the Act requires that any levy upon the District must be for the "common benefit to the district as a whole" or upon any zone in the District "according to the benefits derived or to be derived by said respective zones" and "[i]t is declared that all property within a given zone is equally benefited under this act." (See 64 Ops.Cal.Atty.Gen. 105, 113 (1981).)

Neither the fact that the assessment is to pay for operating and maintaining public works (see American River Flood Control Dist. v. Sayre, supra, 136 Cal.App.3d 347, 354-355; 65 Ops.Cal.Atty.Gen. 176, 182-183 (1982)), nor that it is levied on an ad valorem basis (see Cedars of Lebanon Hosp. v. County of Los Angeles (1950) 35 Cal.3d 729, 747-748; American River Flood Control Dist. v. Sayre, supra, 136 Cal.App.3d 347, 355-356; Solvang Mun. Improvement Dist. v. Board of Supervisors, supra, 112 Cal.App.3d 545, 553; County of Santa Barbara v. City of Santa Barbara (1976) 59 Cal.App.3d 364, 380) precludes the finding of a special assessment.

We note that the amount of an assessment levied against a particular parcel need not be exactly proportional to the benefit received. As long as the assessment is "generally proportional to benefits" (White v. County of San Diego, supra, 26 Cal.3d 897, 905) and "approximate" (People v. Lynch (1875) 51 Cal. 15, 20) it will be upheld. (See White v. County of San Diego, supra, 26 Cal.3d 897, 900; City of Baldwin Park v. Stoskus (1972) 8 Cal.3d 563, 568; Roberts v. City of Los Angeles (1936) 7 Cal.2d 477, 494; Larsen v. San Francisco (1920) 182 Cal. 1, 8-9, 14-17; American River Flood Control Dist. v. Sayre, supra, 136 Cal. App.3d 347, 358-359; Federal Construction Co. v. Ensign (1922) 59 Cal.App. 200, 213-214.) 4/

---

3. We also note that special assessments are normally imposed only after the affected property owners have been given notice, an opportunity to be heard, and the right to preclude the assessment by "majority protest." (See County of Placer v. Corin, supra, 113 Cal.App.3d 443, 454, fn. 9.)

4. For certain flood control districts, the Legislature has developed a formula for calculating special assessments based upon the degree of flood protection that a parcel receives, its size, and its capacity for being put to use. (See Wat. Code, § 12878.40; American River Flood Control Dist. v. Sayre, supra, 136 Cal.App.3d 347, 358-359.)

In American River Flood Control Dist. v. Sayre, supra, 136 Cal.App.3d 347, 357, the Court of Appeal indicated that a margin of error of 25 to 30 percent would be acceptable in calculating the benefit assessment but that a disparity of 100 percent between assessment and benefit would be unacceptable.

We have little doubt that the Legislature intended to authorize the imposition of special assessments under section 12 of the Act. The reference to "benefits" makes this clear, as does the phrase "tax or assessment." If the Legislature had intended to preclude the levy of a special assessment, it easily could have omitted the "benefits" and the "or assessment" language. In construing the words of a statute, we must accord significance to every word and phrase (Pacific Legal Foundation v. Unemployment Ins. Appeals Bd. (1981) 29 Cal.3d 101, 114), so as not to render "statutory language useless or meaningless" (Wells v. Marina City Properties, Inc. (1981) 29 Cal.3d 781, 788; see also California Mfgrs. Assn. v. Public Utilities Com. (1979) 24 Cal.3d 836, 844; Fields v. Eu (1976) 18 Cal.3d 322, 328). In Emery v. San Francisco Gas. Co. (1865) 28 Cal. 345, 362-363, the Supreme Court observed:

> "Taxation and assessments are here spoken of and recognized as legitimate modes of exercising power. The framers of the Constitution could not have intended to convey the same specific idea by those two terms. If so, they are guilty of unmeaning tautology, and might just as well have said, 'taxation and taxation.' They must have meant something by the use of the word assessments specifically different from taxation, as that term was understood by them."

Unfortunately, the matter is not so easily resolved, since the Legislature directed the assessment to be made "upon all taxable property." (Act, § 12.) As a consequence, we must examine the following principles: "a levy imposed on all of the property in a district, both real and personal, according to its value and not upon the basis of special benefit, is a general tax and not a special assessment" (Paso Robles etc. Hospital Dist. v. Negley (1946) 29 Cal.2d 203, 205; see Anaheim Suger Co. v. County of Orange, supra, 181 Cal. 212, 216; Southern Pac. Co. v. Levee Dist. No. 1 (1916) 172 Cal. 345, 350; Trumbo v. Crestline Lake Arrowhead Water Agency (1967) 250 Cal.App.2d 320, 322-323), and "an assessment is a charge only upon the real estate within the given district" (Williams v. Corcoran (1873) 46 Cal. 553, 556; see County of San Bernardino v. Flournoy, supra, 45 Cal.App.3d 48, 51; Northwestern etc. Co. v. St. Bd. Equal., supra, 73 Cal.App.2d 548, 552).

The fundamental problem in having an ad valorem special assessment against personal property 5/ is that the assessment will not be proportional to the benefit received. Unlike realty, the value of personal property is not subject to increase due to its location in a special assessment district. The value of stocks and bonds, for example, is not affected by the location of the stocks and bonds certificates in a street improvement district. An assessment based upon the value of personal property would thus create unfairness among property owners. The declaration in section 12 of the Act that "all property within a given zone is equally benefited" is manifestly untrue if "all property" includes personal property.

Consequently, the Legislature has used language in section 12 of the Act indicating both that it is authorizing the levy of a special assessment and that it is not. While the words "all taxable property" appear to have a clear meaning in isolation, they become ambiguous when considered in context. How may this ambiguity be resolved?

One observation is that the Supreme Court and Court of Appeal have been reluctant to broadly interpret article XIII A of the Constitution or to restrain local governments from collecting revenues, including special assessments. (See City and County of San Francisco v. Farrell (1982) 32 Cal. 3d 47; Los Angeles County Transportation Com. v. Richmond (1982) 31 Cal.3d 197; Carman v. Alford (1982) 31 Cal.3d 318; American River Control Dist. v. Sayre, supra, 136 Cal.App.3d 347; Pugh v. Sacramento (1981) 114 Cal.App.3d 317; Solvang Mun. Improvement Dist. v. Board of Supervisors, supra, 112 Cal.App.3d 545; Mills v. County of Trinity (1982) 108 Cal.App.3d 656; County of Fresno v. Malmstrom, supra, 94 Cal.App.3d 974.)

Here, we note that the Legislature has amended various provisions of the Act since the adoption of article XIII A of the Constitution; however, no changes have been

---

5. Because of the various exemptions from tax given to personal property (see, e.g., Cal. Const., art. XIII, § 2; Rev. & Tax. Code, § 219), it may seem that the personal property component of "all taxable property" would invoke the principle: de minimis non curate lex (the law takes no account of trifles). The secured property tax roll, however, "is comprised of almost 40 percent personal property" and "the unsecured roll contains . . . 67 percent personal property" throughout the state. (Trailer Train Co. v. State Board of Equalization (N.D. Cal. 1981) 511 F.Supp. 553, 556, fn. 6, affd. in part and vacated in part (9th Cir. 1983) 697 F.2d 860.)

made in section 12 of the Act. (See Stats. 1982, ch. 541, § 1.) Legislation that would specifically take into account the recent constitutional limitation upon property "taxes" would best resolve the issue.

Presently, either section 12 of the Act has no useful purpose or it authorizes the levy of a special assessment against real property. We believe that the Legislature intended to authorize special assessments, and thus construe section 12 of the Act to apply only to "taxable (real) property" with regard to such assessments.

The primary and fundamental rule in construing the provisions of a statute is to "'assertain the intent of the Legislature so as to effectuate the purpose of the law.'" (Moyer v. Workmen's Comp. Appeals Bd. (1973) 10 Cal.3d 222, 230.) "The statute should not be read literally if to do so would bring about a result inconsistent with the intent of the Legislature." (People v. Davis (1981) 29 Cal.3d 814, 828; see County of San Diego v. Muniz (1978) 22 Cal.3d 29, 36; County of San Bernardino v. Hickman (1967) 666 Cal.2d 841, 849, fn. 6; Bruce v. Gregory (1967) 65 Cal.2d 666, 673-674.) "'[W]here a word of common usage has more than one meaning, the one which will best attain the purposes of the statute should be adopted, even though the ordinary meaning of the word is thereby enlarged or restricted. . . .'" (Sierra Club v. City of Hayward (1981) 28 Cal.3d 840, 860-861, fn. 12.)

By restricting the words "taxable property" to "taxable real property," we give meaning and purpose to section 12 of the Act. 6/ The cases in which the courts have not so limited the term, but where there had been no benefit determination by the Legislature, are not in point regarding legislative intent.

In answer to the question presented, therefore, we conclude that the Board of Supervisors of the District may levy and collect an ad valorem assessment upon the taxable property (land and improvements) of the District or any zone thereof as authorized under section 12 of the Act.

* * * *

---

6. The method by which the real property is to be valued for the assessments is beyond the scope of this opinion. American River Control Dist. v. Sayre, supra, 136 Cal.App.3d 347, 357-358, discusses the issue while concluding that the calculation may not be based upon the value of the property at the time of its acquisition.